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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION
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11 CHARLES E. CRAYON,) Case No. CV 15-9919-JFW (AS)
12)
13 Petitioner,) ORDER OF DISMISSAL
14)
15 v.) WITHOUT PREJUDICE
16)
17 DAVE DAVEY,)
18)
19 Respondent.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

18 INTRODUCTION

19
20 On December 28, 2015, Charles E. Crayon ("Petitioner"), a
21 state prisoner proceeding *pro se*, filed a Petition for Writ of
22 Habeas Corpus by a Person in State Custody ("Petition"), pursuant
23 to 28 U.S.C. § 2254, accompanied by supporting Exhibits. (Docket
24 Entry No. 1).¹

25 ¹ On September 6, 2012, Petitioner filed a Petition for
26 Writ of Habeas Corpus by a Person in State Custody, pursuant to 28
27 U.S.C. § 2254 in this Court. (Charles E. Crayon v. Rick Hill, CV
28 12-7643-JSL (AN)). On October 19, 2012, the Court denied and

1 The Petition appears to allege the following grounds for
2 federal habeas relief: (1) Petitioner suffered a diabetic attack in
3 front of the jury but did not receive any medication or treatment,
4 in violation of the Eighth Amendment; (2) Petitioner received
5 ineffective assistance of counsel based on his trial counsel's
6 failure to call a psychiatric expert to testify at trial; (3)
7 Petitioner received ineffective assistance of counsel based on his
8 trial counsel's opening statement; and (4) Petitioner and his trial
9 counsel had a conflict of interest as reflected in his trial
10 counsel's failure to conduct discovery. (See Petition at 5-6).

11 12 PROCEDURAL BACKGROUND

13
14 On June 19, 2009, a Los Angeles County Superior Court jury
15 found Petitioner guilty of voluntary manslaughter in violation of
16 California Penal Code ("P.C.") § 192(a) and found true the special
17 allegation that Petitioner personally used a deadly and dangerous
18 weapon in violation of P.C. § 12022(b)(1). On June 30, 2009,
19 Petitioner was sentenced to state prison for a total of 12 years.
20 (See Petition at 2, Exhibit "B" at 3 [California Court of Appeal
21 Opinion, second page]).

22 _____
23 dismissed that Petition without prejudice for failure to exhaust
24 available remedies as to any of the claims alleged in that
25 Petition. See id., Docket Entry Nos. 5, 7-8; Petition, Exhibit
26 "D"). The Court takes judicial notice of the records available on
27 the PACER database. See Harris v. County of Orange, 682 F.3d 1126,
1131-32 (9th Cir. 2012) (court may take judicial notice of
undisputed matters of public record, including documents on file in
federal and state courts).

1 On March 2, 2011, the California Court of Appeal affirmed
2 Petitioner's conviction and sentence. (See Petition at 2-3,
3 Exhibit "A," Exhibit "B").

4
5 Petitioner filed a Petition for Review with the California
6 Supreme Court, which was summarily denied on May 18, 2011. (See
7 Petition at 3, Exhibit "B" at 1, Exhibit "C").²

8 On June 25, 2012, Petitioner filed a petition for writ of
9 habeas corpus with the California Court of Appeal, which was
10 summarily denied on July 9, 2012. (See Petition, Exhibit "A" at
11 9).

12
13 On September 6, 2012, Petitioner filed a Petition for Writ of
14 Habeas Corpus by a Person in State Custody, pursuant to 28 U.S.C.
15 § 2254 in this Court. (Charles E. Crayon v. Rick Hill, CV 12-7643-
16 JSL (AN)). On October 19, 2012, the Court denied and dismissed
17 that Petition without prejudice for failure to exhaust available
18 remedies as to any of the claims alleged in that Petition. See
19 id., Docket Entry Nos. 5, 7-8; Petition, Exhibit "D").³

20
21 ² The Court takes judicial notice of state court records
22 that are available on the California Courts' website at
23 <http://appellatecases.courtinfo.ca.gov> (last visited January 4,
24 2016). The website provides the date on which Petitioner filed his
25 direct appeal to the California Court of Appeal and the date on
which the appeal was decided, and the date on which Petitioner filed
his Petition for Review with the California Supreme Court and the
date on which the Petition for Review was denied.

26 ³ The Court takes judicial notice of the records available
27 on the PACER database. See Harris v. County of Orange, 682 F.3d
1126, 1131-32 (9th Cir. 2012) (court may take judicial notice of

1 On October 16, 2015, The Ninth Circuit denied Petitioner's
2 application to file a second or successive habeas corpus petition
3 in the district court. (See Petition at 3-4, Exhibit "H").
4

5 DISCUSSION

6

7 As a matter of comity, a federal court will not entertain a
8 habeas corpus petition unless the petitioner has exhausted the
9 available state judicial remedies on every ground presented in the
10 petition. 28 U.S.C. § 2254(b) - (c); Baldwin v. Reese, 541 U.S. 27,
11 29 (2004); Rose v. Lundy, 455 U.S. 509, 518-22 (1982). The habeas
12 statute explicitly provides that a habeas petition brought by a
13 person in state custody "shall not be granted unless it appears
14 that -- (A) the applicant has exhausted the remedies available in
15 the courts of the State; or (B) (i) there is an absence of available
16 State corrective process; or (ii) circumstances exist that render
17 such process ineffective to protect the rights of the applicant."
18 28 U.S.C. § 2254(b) (1). Moreover, if the exhaustion requirement is
19 to be waived, it must be waived expressly by the State, through
20 counsel. 28 U.S.C. § 2254(b) (3).
21

22 Exhaustion requires that the prisoner's contentions be fairly
23 presented to the state courts, and be disposed of on the merits by
24 the highest court of the state. See James v. Borg, 24 F.3d 20, 24
25

26 undisputed matters of public record, including documents on file in
27 federal and state courts).
28

(9th Cir. 1994); Carothers v. Rhay, 594 F.2d 225, 228 (9th Cir. 1979). A claim has not been fairly presented unless the prisoner has described in the state court proceedings both the operative facts and the federal legal theory on which his claim is based. Duncan v. Henry, 513 U.S. 364, 365-66 (1995); Picard v. Connor, 404 U.S. 270, 275-78 (1971); Johnson v. Zenon, 88 F.3d 828, 830 (9th Cir. 1996).

Here, as Petitioner concedes (see Petition at 5-6; see also Petition at 3), Petitioner has failed to present each and every Ground alleged in the Petition to the California Supreme Court. The Petition is therefore unexhausted and subject to dismissal on its face.⁴

Petitioner has failed to state an exhausted constitutional claim for relief and therefore, the Petition fails to state a claim upon which relief may be granted. If it "appears from the application that the applicant or person detained is not entitled" to habeas relief, a court may dismiss the action without ordering service on the requested party. 28 U.S.C. § 2243; see also Rule 4,

⁴ In certain circumstances, the Court has authority to stay a "mixed" petition containing both exhausted and unexhausted claims. See Rhines v. Weber, 544 U.S. 269 (2005); King v. Ryan, 564 F.3d 1133, 1143 (9th Cir. 2009) (stay procedure authorized by Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), overruled on other grounds, Robbins v. Carey, 481 F.3d 1143 (9th Cir. 2007) ("Kelly" remains available after Rhines). However, the present Petition is not mixed; it is completely unexhausted. The Court cannot stay a completely unexhausted petition. See Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006).

1 Rules Governing Section 2254 cases in the United States District
2 Courts (petition may be summarily dismissed if petitioner plainly
3 not entitled to relief); Local Civil Rule 72-3.2 (magistrate judge
4 may submit proposed order for summary dismissal to district judge
5 "if it plainly appears from the face of the petition []that the
6 petitioner is not entitled to relief").

7
8 Petitioner may be able to present his claims to the California
9 Supreme Court. See In re Harris, 5 Cal.4th 813, 825 (1993)
10 ("[H]abeas Corpus has become a proper remedy in this state to
11 collaterally attack a judgment of conviction which has been
12 obtained in violation of fundamental constitutional rights.")
13 (citations and quotations omitted).⁵

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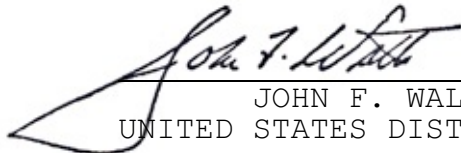
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23 ⁵ The Court expresses no opinion concerning whether
24 consideration of a state habeas petition might be foreclosed by
25 state procedural law. The California Supreme Court should evaluate
26 this matter in the first instance. Moreover, even if there exists
27 an applicable state procedural bar, the California Supreme Court
28 nevertheless might choose to reach the merits of Petitioner's
claims. See e.g., Park v. California, 202 F.3d 1146 (9th Cir.
2000).

ORDER

For the foregoing reasons, the Petition is dismissed without prejudice.⁶

DATED: January 6, 2016


JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

Presented this 5th day
of January 2016, by:

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE

⁶ This dismissal will not relieve Petitioner from complying with the one-year statute of limitations set forth in 28 U.S.C. § 2244(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), with respect to any future habeas petitions filed in this Court. The Court notes, without deciding, that Petitioner's conviction became final on August 16, 2011, when Petitioner's time to petition the United States Supreme Court for a writ of certiorari expired. See Wixon v. Washington, 164 F.3d 894, 897 (9th Cir. 2001); Bowen v. Roe, 188 F.3d 1157, 1158-59 (9th Cir. 1999). Therefore, the AEDPA statute of limitations began to run on August 17, 2011 and, absent grounds for statutory and/or equitable tolling, expired one-year later on August 17, 2012.